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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. [redacted]82

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,
Petitioner,

vs.

THE OHIO BELL TELEPHONE COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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A. OPINIONS DELIVERED BELOW.

There has been but one "opinion" delivered by the Courts below in this matter. This was issued on April 11, 1958, by Judge Paul C. Weick of the United States District Court for the Northern District of Ohio, Eastern Division. (160 Fed. Supp. 822.) It is included in the printed appendix originally filed in the Sixth Circuit Court of Appeals by the Appellant and which is submitted herewith. (176a-184a.)

The Court of Appeals on March 5, 1959, issued an order affirming, without opinion, the judgment of the District Court on the basis of the findings of fact and opinion of Judge Weick. (See appendix attached hereto.)

B. JURISDICTION OF THIS COURT.

The Petitioner, Communications Workers of America, AFL-CIO, seeks review of an order of the United States Court of Appeals for the Sixth Circuit, affirming a ruling of the District Court denying jurisdiction of the Federal Courts over the controversy in this case. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

C. QUESTION PRESENTED FOR REVIEW.

Does the Federal Court have jurisdiction under Section 301(a) of the Labor Management Relations Act to issue a "Declaratory Judgment" to resolve a dispute as to the existence and validity of a collective bargaining agreement?

D. STATUTES INVOLVED.

Section 301 of the Labor-Management Relations Act, 1947, 29 U. S. C. A., Section 185, provides, in pertinent part, as follows:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> (b) * * * Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States * * *.

28 U. S. C. Section 2201 provides as follows:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

E. STATEMENT.

The Petitioner, Communications Workers of America, AFL-CIO, which we shall refer to as the Union, instituted this suit in the District Court for the Northern District of Ohio, Eastern Division. The Complaint was against The Ohio Bell Telephone Company[1] and set forth a claim for specific performance of a collective bargaining agreement entered into on September 30, 1957, which the Company was refusing to acknowledge and observe. The prayer was for a declaratory judgment determining the validity of the agreement and ordering the Company to carry out its terms and provisions "in behalf of the Union and said employees."

Before the controversy developed, the Union and the Company had had a series of collective bargaining agreements covering the Ohio Bell employees. During 1957, the Union and the Company attempted to negotiate a new contract. These negotiations began on about July 31, 1957. On September 16th, agreement not yet having been reached, the Union took strike action.

On or about September 30, 1957, the contract negotiations were concluded. At this point, however, the Company came forward with an entirely new proposition, in the form of a so-called "back-to-work stipulation," affecting the "net credited service" status of the striking employees. The Union, insisting that a contract had already been agreed upon prior to the "back-to-work stipulation" being raised, terminated the strike.

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[1] The Company operates a telephone system throughout the State of Ohio.

Thereupon, this action was filed in the District Court by the Union. The matter came on first upon a Motion for Preliminary Injunction. The Court had this to say at the time of oral argument after the submission of the evidence in support of the Motion (46a-47a):

> **The Court:** *I have looked into the matter of jurisdiction. I'm satisfied that the Court has jurisdiction, so you don't need to argue that point.*
>
> But I am concerned about several matters, that is one: whether or not this is a binding contract; whether the statute of frauds in Ohio bars enforcement of it; and, thirdly, whether or not the Court would be justified in a matter of this kind—in an action of this kind, which is one, in effect, for specific performance of a contract, whether the Court, on a preliminary injunction, would be justified in ordering the defendant to perform a contract, which is what the final relief is for, namely, for specific performance.
>
> In other words, if I would grant a temporary injunction, I would be, in fact, granting final relief.
>
> I have read your brief, and I was convinced that I have jurisdiction. But there were no authorities cited on the matter of whether or not in a case of this type, the Court could issue a mandatory order compelling specific enforcement of a contract.
>
> Normally, a temporary or preliminary injunction is granted to preserve the status quo so that nobody will be harmed until the Court has the opportunity to finally pass on the issues. I mean, that is the purpose of a temporary restraining order: to prevent harm or injury to the parties, pending the action.
>
> Now, doesn't this go further than that, by actually granting the final relief which you pray for in the complaint?
>
> Now, those are the things that I'm concerned about. I wish you would argue those.

Mr. Metzenbaum: If the Court please,—

The Court: *I mean, you don't need to argue the jurisdiction because I am convinced that under the recent Supreme Court decision, that I have jurisdiction.*

The District Judge was apparently satisfied as to his "jurisdiction" in the matter, however, he considered that under the circumstances of this case the "preliminary relief," if granted, would be tantamount to "final relief." On this basis, therefore, he denied the Motion for Preliminary Injunction on November 18, 1957.

The hearing on the merits came on before District Judge Weick on December 18, 1957. The next day the parties entered into an interim stipulation with respect to their contractual status as it might be affected by the possible disposition of the case. It had these essential features (Appendix attached hereto, page 11):

Firstly, that their collective bargaining agreement would be retroactive either to December 1, 1957 or September 30, 1957, depending upon the Federal Court's decision as to whether or not a contract had been reached between the parties as of September 30, 1957.

Secondly, if the Court found that an agreement had *not* been reached on September 30, 1957, the "back-to-work stipulation" brought forward by the Company on October 1, 1957, would be *included* as a part of the agreement.

Thirdly, if the Court found that an agreement had been reached on September 30, 1957, the "back-to-work stipulation" would *not be included* as a part of the contract.

And also, in the event the Court found a contract existing as of September 30, 1957, then all terms and conditions would apply from such time. That is, the Company would be obligated to pay the negotiated wage increases retroactively from such date. Moreover, the period of du-

ration of the agreement was affected by the controversy. Since the contract provided for a fifteen month term, if it were effective as of September 30, 1957, then it would be binding through December 31, 1958. However, if the fifteen month term ran from the later date (December 1, 1957), then all terms remained fixed until March 1, 1959, without any earlier right of re-negotiation.

The hearing on the merits concluded on December 20, 1957. On April 11, 1958, District Judge Weick issued his Memorandum Opinion finding that the Union's Complaint should be dismissed for lack of jurisdiction. (178a-184a.) An entry of the dismissal order was made on April 15th and amended on April 18th to include the Court's Opinion, Findings of Fact, and Conclusions of Law.

The rationale of the District Judge in dismissing the Complaint, is somewhat difficult to comprehend. The Court directed attention to the fact that the former contract between the parties was effective until a new agreement was reached. He uses this fact to conclude, as he said, that—

> The agreement of September 9, 1956 and the alleged oral agreement of September 30, 1957 were mutually exclusive. The Company ought not to be held in violation of the latter when it was required to and did perform the former until the new agreement of December 19th went into effect.

The Court then defined what he considered to be the effect of the special interim agreement which the parties had entered into on December 19, 1957, during the trial on the merits. On the basis of this interim understanding, the Court determined that—

> In reality, all that remains of this case is that the Union wants the Court to determine whether a verbal agreement was made on September 30, 1957, and if so, its terms and conditions. *While this may furnish the basis for an action for declaratory judgment*, it

hardly complies with the requirements of Section 301(a) of the Labor Management Relations Act. (Emphasis added.)

* * * * *

The Union claims that jurisdiction existed because it is seeking enforcement of the entire collective bargaining agreement of September 30, 1957. This contention overlooks the actualities of the case. The real dispute between the parties concerns one matter only, namely, the adjustment of the net credited service of the employees.

Judge Weick's opinion that jurisdiction did not exist appears to be grounded upon two somewhat diverse propositions. In the first place, he considered that the *establishment* of the contract as of a particular date merely determined the method of computing the "net credited service" of the employees. On this basis he then concluded that the contract provisions with respect to "net credited service" affected only the rights and benefits of particular individual employees. Therefore, the Union as an entity had no direct interest in these provisions and, under the ruling of the *Westinghouse* case*, the action was outside the jurisdiction of the Federal Court. The further basis of the lower Court's ruling was that it could not "enforce an agreement until there has been a violation of it by the Company." He observed that there had been no showing of "violation of any agreement recognized by the parties." He concluded in this respect, therefore, that there was no "present controversy" without which there was no jurisdiction.

Following the submission of briefs and oral argument, the Court of Appeals affirmed the judgment of the District Court upon the findings of fact and opinion of Judge Weick.

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* *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437.

F. REASONS FOR GRANTING THE WRIT.

Here a labor organization seeks a declaratory judgment as to the existence and validity of a contract between it and an employer engaged in an industry affecting commerce.

Section 301 of the Labor Management Relations Act deals with Federal Court jurisdiction over such a controversy. Numerous decisions by the Supreme Court as well as other Federal Courts have defined the limits and extent of this jurisdiction. Two fundamental principles are applied. First, jurisdiction is asserted to afford the necessary legal remedies contemplated by Federal law respecting collective bargaining agreements. Secondly, jurisdiction is asserted over actions involving labor contracts where the remedy appropriately pertains to the Union as an entity.

The decision below enunciates the proposition that labor organizations have no direct interest in having the existence and validity of their contracts with employers recognized by a declaratory judgment in a Federal forum. That is to say, unions may not litigate a question related to the existence of a labor contract in the Federal Court, unless the employer engages in conduct which would be violative of such a contract; more particularly, only if such violation concerns some direct interest of the union as distinguished from its interest as a representative of all the employees.[2] Otherwise, the parties can only

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[2] The ruling of District Judge Weick is to be contrasted with the opinion expressed by District Judge McIlvaine in *Kennametal, Inc. vs. United Automobile Workers*, 161 F. Supp. 362 at page 364:

"In respect to Count 2, the question very simply is whether the United Auto Workers may bargain with Kennametal for a new contract, or are they bound and prohibited from doing so by the former contract entered into between the United Mine Workers and Kennametal? United Auto Workers maintain that they are not so bound. Kennametal on the other hand claims that they are bound. Kennametal seeks a declaratory judgment to this

(Continued on following page)

resort to the state courts for interpretations and determinations concerning the validity, effect, and existence of the contract.

(Continued from preceding page.)

effect. The United Auto Workers maintain that the Court does not have the jurisdiction to make such a declaratory judgment because the jurisdiction of the Court under Section 301, Labor Management Relations Act of 1947, 29 U. S. C. A. § 185 is limited.

"The dispute between the Auto Workers and Kennametal appears to directly and primarily affect the rights of the union and the company even though of necessity there are involved certain uniquely personal rights of the employees.

"Under the reasoning of Judge Hastie of our Court of Appeals as set forth in the case of United Steelworkers of America v. Pullman-Standard Car Mfg. Co., 3 Cir., 1957, 241 F. 2d 547, and applying what we believe to be the majority view of the Supreme Court in Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation, 348 U. S. 437, 75 S. Ct. 488, 99 L. Ed. 510, and Textile Workers Union of America v. Lincoln Mills, 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972, this Court might have jurisdiction over Count 2, the declaratory judgment action to determine whether there is a violation of a contract by a labor organization representing employees and the employer. The basic question is whether we have jurisdiction or not. The Auto Workers maintain that the court has no jurisdiction because they were not a party to the contract, and the court can have jurisdiction under Section 301 only between a union and the employer where there is a dispute or violation of a contract involved to which they were a party. *Kennametal says the Auto Workers are bound by this contract. The Auto Workers say they are not. If the Auto Workers are bound by the contract by operation of law, then the refusal to recognize the contract would be a violation of the contract.* On the other hand, if they are not bound to the contract by operation of law, then there could not be a violation of a contract involved, and the court would not have jurisdiction. This leads to the conclusion or to the problem that in order to determine the question of jurisdiction the court has to determine the fundamental question in which Kennametal seeks a declaratory judgment. Thus, we feel that a decision on the question of jurisdiction will answer the very question on which Kennametal seeks a declaratory judgment. We, therefore, will not rule on the question of jurisdiction at this time until a full hearing is held on the question of whether the United Auto Workers are bound to the contract by operation of law. In view of the fact that this involves the question of jurisdiction of the court, a declaration of rights of employees and an employer, and a matter of important concern to many working men, this Court will direct that the case be set down for an early hearing, and will attempt to make an expeditious determination of the question involved."

It further means that while individual employees may seek relief in the state courts with respect to claims arising out of their employment contracts, nevertheless, the Union itself, in the first instance, is not afforded the opportunity of establishing such a contract on the basis of law fashioned in the Federal courts.

We do not believe that Congress, in enacting Section 301, intended the result which the ruling of the lower court creates. Your petitioner submits that the decision of the Court of Appeals involves an important question of federal law which has not been, but should be settled by this Court; or, if such question can be regarded as settled, then the Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

I. Whether the Validity and Binding Effect of a Labor Contract May Be Determined in Federal Court, Presents an Important Question of Federal Law.

The importance of the question here presented, and the error of the lower court, is emphasized when it is recognized that Section 301(a) is far more than a bare jurisdictional grant:—it creates the very substantive rights to be adjudicated when it is invoked.

As this Court said in *Textile Workers Union vs. Lincoln Mills of Alabama* (353 U. S. 448, 456):

> * * * we would undercut the Act and defeat its policy if we read Section 301 narrowly as only conferring jurisdiction over labor organizations. The question then is, what is the substantive law to be applied in suits under Section 301(a)? We conclude that the substantive law to apply in suits under Section 301(a) is federal law which the Courts must fashion from the policy of our national labor laws.

We believe that this brings us to the very heart of the matter; namely, the intention of Section 301 that issues such as the establishment and validity of collective bargaining agreements be resolved pursuant to the substantive law to be fashioned in the Federal courts.

The lower court here held that Section 301 does not encompass determining the binding effect of a collective bargaining agreement between an employer and a labor organization. It reached this conclusion by analyzing the substantive rights of the parties in the particular provisions of the contract here involved. This is a matter which, under the *Lincoln Mills* decision as well as many other earlier and subsequent decisions, should be determined as a question of federal law in the light of all the provisions of the Federal Act governing the relationship between unions and employers.

Furthermore, once reached, the conclusion constitutes much more than a limitation on Federal jurisdiction. It constitutes a determination as to what substantive law will govern the ultimate determination as to the existence of the labor contract.[3]

The critically important effect of the denial of Federal court jurisdiction upon such questions, is sharply illustrated in the instant case. The contract in controversy was intended to operate for a fifteen month period and being unsigned was an "oral" agreement. Moreover, as an oral contract not performable within one year, it is not enforceable in the state courts of Ohio.[4] Thus, the resolution of the question whether the Union can bring its suit in the Federal Court or is limited to the State court, may

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[3] *Schatte vs. International Alliance etc.*, 182 F. 2d 158, 164 (C. A. 9, 1950); *Shirley Herman Co. vs. Hod Carriers Union*, 182 F. 2d 806 (C. A. 2, 1950); *Operating Engineers vs. Dahlem Const. Co.*, 193 F. 2d 470 (C. A. 6, 1951).

[4] Revised Code of Ohio, Section 1335.05, Statute of Frauds.

very well bring about a determination of the ultimate question concerning the enforceability of the contract itself. Whatever the state rules concerning oral contracts may be, they surely are not controlling of the law to be applied in the Federal courts concerning collective bargaining agreements. This proposition was well stated by the Second Circuit Court of Appeals in *Rabouin v. National Labor Relations Board*, 195 F. 2d 906 (1952) as follows:

> But petitioner also alleges the invalidity of the 1946 contract as to him on the ground that the New York Statute of Frauds, N. Y. Pers. Prop. Law Section 31, voids all agreements not to be performed within one year which are not signed by the party to be charged. The contention can have no weight; *the vagaries of state rules of law may not override provisions of a federal act* geared to the effectuation of an important national labor policy. *Hill v. Florida ex rel. Watson, Atty. Gen.*, 325 U. S. 538; *N. L. R. B. v. Hearst Publications*, 322 U. S. 111, 123. A state statute of frauds, no matter what its wording, can not transform into an unfair labor practice activity under the Act otherwise validated by a binding oral agreement between employer and the Union. Cf. *Hamilton Foundry & Machine Co. v. International Molders & Foundry Workers*, 193 F. 2d at page 215. (Emphasis added.)

The end result of collective bargaining is the accomplishment of agreements between employers and labor organizations. The proposition is stated thusly in the Labor Management Relations Act (Section 8(d)):

> * * * to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising

thereunder, and the *execution of a written contract incorporating any agreement reached if requested by either party* * * *

It is a settled requirement that the parties are obligated, upon request, to commit to writing and sign any contract embodying the terms of agreement reached between them. The Federal courts have likewise taken cognizance of the binding effect of collective bargaining agreements, irrespective of their form. See, for example, *National Labor Relations Board v. Scientific Nutrition Corp.*, 180 F. 2d 447; *Hamilton Foundry and Machine Co. v. International Molders and Foundry Workers*, 193 F. 2d 209, 1951.

There has been a considerable body of federal law defining the importance which our national labor policy attaches to making collective bargaining agreements effective and binding. This history and policy was reviewed by this Court in *H. J. Heinz v. National Labor Relations Board*, 311 U. S. 514, 525-6 (1941), in these words:

> We think that Congress, in thus incorporating in the new legislation the collective bargaining requirement of the earlier statutes included as a part of it, the signed agreement long recognized under the earlier acts as the final step in the bargaining process. It is true that the National Labor Relations Act, while requiring the employer to bargain collectively, does not compel him to enter into an agreement. But it does not follow, as petitioner argues, that, having reached an agreement, he can refuse to sign it, because he has never agreed to sign one. He may never have agreed to bargain but the statute requires him to do so. To that extent his freedom is restricted in order to secure the legislative objective of collective bargaining as the means of curtailing labor disputes affecting inter-

state commerce. The freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. A business man who entered into negotiations with another for an agreement having numerous provisions, with the reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith. *This is even more so in the case of an employer who bases his refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aim of the statute to secure industrial peace through collective bargaining.* (Emphasis added).

This Court has said that Congress, in enacting Section 301, was "concerned with reshaping labor-management legal relations; and it was taking precise steps to declared and announced objectives." *Longshoremen vs. Juneau Spruce Corporation*, 342 U. S. 239, 241. Surely there is nothing in the declared and announced objectives of Congress which supports the denial of jurisdiction to settle the contractual relations of the parties which results from the decision below.

Quite to the contrary, when the debate in the House narrowed to the question whether § 301 was more than jurisdictional, it became abundantly clear that the purpose of the section was to provide the necessary legal remedies. The following particularly significant discussion took place when Section 302 of the House bill, the substantial equivalent of the present § 301, was being described by Mr. Hartley, the sponsor of the bill in the House:

Mr. Barden. Mr. Chairman, I take this time for the purpose of asking the Chairman a question, and in asking the question *I want it understood that it is intended to make a part of the record that may hereafter be referred to as history of the legislation.*

It is my understanding that section 302, the section dealing with equal responsibility under collective bargaining contracts in strike actions and proceedings in district courts contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in *other words, proceedings could, for example, be brought by the employers, the labor organizations or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract.*

Mr. Hartley. *The interpretation the gentleman has just given of that section is absolutely correct.*" (93 Cong. Rec. 3653-3657. (Emphasis supplied.)

II. The Decision of the Lower Court, in Applying the Rule of the Westinghouse Case here, is in Conflict with the Doctrine of the Lincoln Mills Decision.

The District Judge, in ruling that he was without jurisdiction, relied principally upon the decision of this Court in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437, 1955 (180a-181a). He observed that "*Westinghouse* is plain authority for the proposition that the Union may not maintain an action in the District Court to collect wages due to employees." Further, he regarded the "net credited service adjustments [as all that was to be decided here and that they] fall within the same category as wages and are uniquely personal to the employees."

The lower court failed to recognize the distinction between a case in which the claim is, as in *Westinghouse*, that the employer refuses to pay employees one days' wages in accordance with an agreement, as compared to a case where an employer *refuses to accept or recognize the existence of the agreement in toto*. The latter brings about not only a denial of wage rates applicable to all employees, but a denial of all other conditions with respect to which there is agreement. Thus, in the instant case, although the general terms of the agreement (with the exception of the matter of "net credited service") are admitted and settled, there is dispute as to whether all these terms become effective as of a precise time, September 30, 1957, as contended by the Union.

That is to say, when the Complaint was filed, the controversy over whether or not a binding agreement had been reached on September 30, 1957, was squarely before the Court. This was the issue or subject matter submitted to the Federal Court under Section 301. Moreover, when the matter did come before the lower court, jurisdiction was so clear and evident that the Court declined to hear argument on that question! (46a)

Subsequently, however, in his decision, the District Court somehow arrived at a different conclusion on the basis that the issue had changed because of the interim arrangement between the parties pending resolution of the contract question by the Court. In doing so, the Court disregarded the fact that the parties had left the initial controversy undisturbed and unresolved. Specifically, the resolution of the dispute was to remain in the hands of the Court where it had been placed by the Complaint. The precise objective of the arrangement being simply that the Union and the employer would have the means of a continuing working relationship, without having to resort

to further economic battle, pending resolution of the legal question. This was a practical and laudable arrangement.

The lower court limited the significance and importance of the original basic controversy, by extracting from the total situation what, in his judgment, he conceived to be the ultimate possible differences between the parties. In his opinion there was at stake only the "net credited service adjustments which affected the employees non-contributing pension fund, vacation allowances, termination allowances and sickness and death benefits." (182a) These matters were, he said, "uniquely personal to the employees [for which they] had a clear right to sue the Company in the state court to obtain redress." In particular, he ruled, the Union's interest in such matters did not give rise to jurisdiction of the Federal courts.

The lower court's approach would, therefore, penalize and prejudice the initial position and rights of the Union, by using the very fact of its undertaking a contingent arrangement with the Company, as the basis for ousting the Federal court of jurisdiction. In any event, the lower court's analysis of the controversy is a strained oversimplification. It disregards entirely the substantial controversy between the Union and the Company concerning their contractual status. These may be summarized as follows:

> (1) The effective operation of the contract from September 30, 1957 fixes its duration to a date 15 months thereafter.
>
> (2) The Unions right to reopen the contract for re-negotiation is deferred to the period following a later date, unless the contract by reason of being effective from September 30, 1957 has an earlier expiration date.

See footnote 2, page 9.

(3) The dispute concerning the "net credited service adjustments" directly affects the day-to-day administration by the Union of the grievances related thereto on behalf of all the employees.

(4) The establishment of the contract as controlling the relations of the Union and the Company with respect to all the employees terminates the Union's right and interest in further negotiations and use of economic force to settle the terms and conditions of work.

The lower court, in regarding the issue in the instant case as within the limitation of the *Westinghouse* doctrine, has, we believe, failed to follow the direction given by the Supreme Court in *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U. S. 448, as well as a body of recent decisions distinguishing *Westinghouse*. These decisions have noted that the language of the *Lincoln Mills* decision was intended to draw a distinction which would serve to restrict jurisdiction under Section 301 to substantive matters which, whatever the personal interest involved, directly and primarily affected the complaining Union as an organization, including the proper administration of the collective bargaining process for which the Union as bargaining agent is responsible. Thus, in *United Electrical Workers v. General Electric Company*, 233 F. 2d 85, 100, the First Circuit Court of Appeals had this to say:

> * * * the effect of the Westinghouse holding, reflected in all of the opinions of the majority justices, was to eliminate from § 301 jurisdiction a complaint by a union that involves no more than a cause of action which is "peculiar in the individual benefit" or "the uniquely personal right of an employee" or which "arises from the individual contract between the employer and the employee" (citation).

> *That holding was not aimed at any cause of action or remedy that appropriately pertains to the union as an entity, particularly one which an individual employee may have no equal power to enforce.* (Emphasis added.)

The Court remanded the case to the District Court for hearing on the question of compelling arbitration of grievances under a contract, although the grievances related only to individual employees.

Likewise, the Sixth Circuit Court of Appeals in *Warehouse Workers v. Buckeye Cotton Oil Company*, 236 F. 2d 776 (1956), distinguished *Westinghouse* in enforcing a contract to arbitrate with regard to over-time wages.

In this connection it is notable that the very decision which the lower court in the instant case relied on for an interpretation of the *Westinghouse* case, namely, *Steelworkers vs. Pullman Car Company*, has this to say at 241 F. 2d 547, 551, C. A. 3 (1957):

> A collective bargaining agreement is a complex of undertakings. The interest of the union in any given promise of the employer and the impact of any breach of that promise upon the union as an organization may be significantly different from the interest of and the impact upon the employees as individuals. Certain undertakings of the employer are important because of their direct and primary effect upon the union as an organization.

And further, the Court in the *Pullman* case went on to review a number of cases in which *Westinghouse* was distinguished and which it summarized in these words (at page 552):

> This body of recent decisions distinguishing *Westinghouse* points to the likelihood that the language used by the Chief Justice was intended to draw a distinction which would serve to restrict jurisdiction under

> Section 301 to substantive matters which, whatever the personal interest involved, directly and primarily affect the complaining union as an organization, and the procedural controversies about the proper administration of the collective bargaining process for which the union as bargaining agent is responsible.

It is difficult to perceive any procedural circumstance which comes closer or more critically to the heart of the "proper administration of the collective bargaining process" than the ascertainment in the first instance of the rules or chart of obligations by which the parties are to be guided. The Union has the right to come into a Federal Court and vindicate its direct interests as the collective bargaining representative of all the employees.

The nature and character of the problem in this case which requires resolution and clarification through Federal Court jurisdiction is emphasized by reference to the case of *Union of Engineers v. Baker Co.*, E. D. Pa., 100 F. Supp. 773 (1951). This case involved a situation where a union had notified employer-contractors of its intention to terminate its contract on April 30, *1951*, and its desire to negotiate a new agreement. The employers did not reply, it being their position that the agreement was not terminated. Instead, it appearing that a strike was imminent, the employers instituted an action in the Pennsylvania State Court to enjoin any strike action or work stoppage. After hearing, the State Court granted a preliminary injunction *and such order was predicated upon a finding that there existed a bona fide collective bargaining agreement which extended to April 30, 1 52.*

The Union then brought suit in the District Court for relief in respect to the State Court action, including a request that the Federal Court "issue a declaratory judgment declaring the agreement found to be valid [by the State Court] to be unauthorized, void and of no effect."

Motions were made to dismiss the action in Federal Court on the ground that the latter Court did not have jurisdiction of the controversy. The Court had this to say on the question of its jurisdiction (at page 776):

> The Labor Management Relations Act of 1947 (29 U. S. C. A. 141, et seq.) popularly known as the Taft-Hartley Act, confers upon the district courts of the United States jurisdiction to entertain suits for violation of collective bargaining agreements between employers and labor organizations representing employees in an industry affecting interstate commerce without respect to the amount in controversy and without regard to the citizenship of the parties. (29 U. S. C. A. Section 185.) Clearly, this complaint sets forth a dispute in that it alleges that the defendant contractors have not lived up to their agreement under the Welfare Plan, which is part and parcel of the collective bargaining agreement. *There is likewise a dispute as to the very existence of a collective bargaining agreement at this time.* The complaint, therefore, sets forth claims upon which relief can be granted by this Court, a motion to dismiss should be denied. Barron and Holtzoff "Federal Practice and Procedure," Volume 1, Sec. 356. While some parts of the relief requested may be improper and outside the jurisdiction of the court, nevertheless, since the complaint as a whole sets forth an issue within the jurisdiction of the court and upon which relief can be granted, the motion to dismiss should be denied. The plaintiffs in this case have set forth claims upon which relief can be granted by this Court, and, consequently, the motion to dismiss was denied. (Emphasis added.)

In the instant case, it is not any one individual's rights, or even a series of individual rights, that is involved. But rather the issue is as to the contract as a whole and whether the parties are obligated to carry out its terms in all respects.

We believe that the right to establish its contract as valid and binding, is a right running directly to the Union. And further, that under Section 301 of the Labor Management Relations Act, as interpreted by the Supreme Court, specifically in the *Lincoln Mills* and related cases, the resolution of a controversy between a company and a union as to whether there is a binding contract between them is within the area of Federal court jurisdiction.

CONCLUSION.

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Of Counsel.

APPENDIX.*

JUDGMENT.

The above cause coming on to be heard upon the transcript of record, the briefs of the parties, and the arguments of counsel in open court, and the court being duly advised, Now, Therefore,

It is Ordered, Adjudged and Decreed that the judgment of the District Court be and is hereby affirmed upon the findings of fact and opinion of Judge Weick.

Approved for entry.

THOMAS T. MCALLISTER,
United States District Judge.

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* Copies of other items necessarily in the Appendix to the Petition are included in the printed appendices originally filed in the Court of Appeals, of which nine copies are submitted herewith.

AGREEMENT

The Communications Workers of America, hereinafter referred to as the "Union", and The Ohio Bell Telephone Company, hereinafter referred to as the "Company", do hereby agree as follows:

1. The wages and working condition offer of the Company introduced by the Union as Plaintiff's Exhibits 1, 2, 3, 4a, 4b, 4c and 4d at the hearing on the motion for preliminary injunction in Case No. 34049 shall be incorporated in a contract, effective December 1, 1957, said contract to be effective for fifteen months thereafter in accordance with the termination clause contained therein and said contract shall be signed forthwith by the Company and the Union. The additional wages provided for therein shall be paid as soon as reasonably can be done.

2. The term "strike", as used herein, shall mean the strike which began officially on September 16, 1957 and any absence from work occurring during the period from September 8, 1957 to and including October 2, 1957, except authorized absences.

3. Neither the Union nor the Company, nor the agents, representatives or members of either party shall discipline nor discriminate against any employee because he participated in or supported, or did not participate in or did not support the strike.

4. This agreement shall be controlling over conflicting provisions, if any, of other contracts and agreements between the Union and the Company entered into prior to this date.

5. If the final judgment, as herein defined, in Case No. 34049 is adverse to the Union or the Union voluntarily dismisses the action prior thereto, Exhibit A, which is at-

tached hereto and made a part hereof, shall become a part of the contract to be executed pursuant to paragraph 1 hereof and said Exhibit A shall thereupon be effective as of December 19, 1957. In that event, the contract entered into pursuant to paragraph 1, hereof, which will be effective as of December 1, 1957, shall remain in effect.

6. If the final judgment herein be in favor of the Union, that is to say, if it shall determine that the Company and the Union agreed upon a Wage and Working Condition Contract on September 30, 1957 or in the early morning of October 1, 1957, that said contract is enforceable and that the court has jurisdiction to and does order the same specifically performed, then and in that event Exhibit A shall never become effective. In such event the contract ordered into effect by the court shall replace the contract effective December 1, 1957 and retroactivity shall be paid to September 30 (or October 1, 1957).

7. During the pendency of Case No. 34049 in the U. S. District for the Northern District of Ohio, Eastern Division, and until final judgment the Union agrees that the Company shall not be required to pay any amounts to employees in excess of those which would be due and payable if Exhibit A were in effect. If upon final judgment the court orders a contract on wages and working conditions into effect as of September 30, 1957 (or October 1, 1957) in Case No. 34049, the Company shall be obligated to promptly pay such sums as are due the employees as a result of Exhibit A having never become effective.

8. The Union will not, in Case No. 34049 or in any other case or proceeding before any court or administrative body, question the legality of this agreement or any part thereof.

9. "Final judgment", as used in this agreement means that judgment which effectively and finally determines the issues, after all appeals, if any, shall have been concluded.

10. A copy of this agreement shall be filed in Case No. 34049 in the office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division.

In witness whereof the parties hereto have entered into this agreement by and through their respective counsel, duly authorized in the premises in duplicate this 19th day of December, 1957.

OHIO BELL TELEPHONE COMPANY

/s/ ASHLEY M. VAN DUZER

COMMUNICATION WORKERS OF AMERICA, AFL-CIO

/s/ HOWARD M. METZENBAUM

EXHIBIT "A"

(Referred to in sections 5, 6, 7 of the above "Agreement" and a part of the "Agreement".)

An employee of the Company who was on strike will upon reporting to work at the end of the strike, be given credit for his "Term of Employment", "Net Credited Service" and "Wage Schedule Service" as of the time he went on strike.

In addition, such employee will receive credit for "Wage Schedule Service" for any absence from work while on strike, not to exceed a period of thirty days.

Such employee will not receive credit for any absence from work while on strike in determining his (a) "Term of Employment" for any purpose or (b) "Net Credited Service" for any purpose other than the following articles of the contract effective as of December 1, 1957:

Article 13. Layoff and Part Timing.

Article 34. Seniority.

"Term of Employment", as used herein, shall mean the same as in the Plan for Employees' Pensions, Disability Benefits and Death Benefits, and as used herein "Net Credited Service" and "Wage Schedule Service" shall mean the same as in said new contract.